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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Environmental Management Services

File: B-244783

Date: August 1, 1991

Sam Z. Gdanski, Esq., for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Paula A. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected protester's bid as nonresponsive for failure to furnish a signed Certificate of Procurement Integrity with its bid is dismissed since completion of the required certificate imposes material legal obligations upon the bidder to which it is not otherwise bound.

DECISION

Environmental Management Services (EMS) protests the rejection of its bid as nonresponsive for failure to include a signed Certificate of Procurement Integrity as required by invitation for bids (IFB) No. DABT39-91-B-0041, issued by the Department of the Army for asbestos removal. EMS contends that rejection of its bid was improper because the solicitation provided neither a signature line nor adequate space to sign the certificate.

We dismiss the protest without obtaining a full agency report based on the information provided by the agency since it is clear that EMS does not state a valid basis of protest. Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)).

The IFB included the text of the Certificate of Procurement Integrity as required by Federal Acquisition Regulation (FAR) § 52.203-8, as well as instructions to bidders on how to complete the certificate. Bidders were explicitly advised that failure to submit a signed certificate with their bids would render their bids nonresponsive. Of the 14 bids received, EMS was the apparent low bidder. Although EMS had entered the required information on the blank lines provided

in the certificate, including the typed name of the individual certifier on the line immediately below the signature line, the EMS certifier neglected to sign the certificate.^{1/} Consequently, the protester's bid was rejected as nonresponsive for failure to include a signed certificate.

In its protest, EMS asserts that our decision in Shifa Servs., Inc., B-242686, May 20, 1991, 70 Comp. Gen. _____, 91-1 CPD ¶ 483 provides a basis for its allegation that its bid was improperly rejected. However, the Shifa decision is inapplicable here. In that case, the solicitation contained neither a signature line nor adequate space to sign the certificate and the majority of bidders were misled regarding the certification's signature requirement. Here, the agency has provided us with the certificate pages of the protester's bid, and it is clear that the certificate contained a distinct signature line and, immediately below the signature line, a distinct line for the typed name of the individual certifier. Ample space was provided for the certifier's signature and for the typed name of the certifier; the EMS certifier simply neglected to sign in the appropriate place.

As we recently explained in Spence Bros., B-243766, May 2, 1991, 91-1 CPD ¶ 428, the Certificate of Procurement Integrity imposes additional legal requirements upon the bidder materially different from those to which the bidder is otherwise bound, either by its bid or by law. In particular, the certification implements several provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (West Supp. 1990); the OFPP Act prohibits activities involving soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information.

The procurement integrity certification requirements obligate a named individual--the officer or employee of the contractor responsible for the bid or offer--to become familiar with the prohibitions of the OFPP Act, and impose on the bidder, and its representative, a requirement to make full disclosure of any possible violations of the OFPP Act, and to certify to the veracity of that disclosure. In addition, the signer of the certificate is required to collect similar certifications from all other individuals involved in the preparation of bids or offers; in this regard, the certifying individual attests that every individual involved in preparation of the bid or offer is familiar with the requirements of the OFPP Act. The certification provisions also prescribe specific contract remedies--including withholding profits from payments and

^{1/} The contracting officer reports that all the other bids received included signed certificates.

terminating errant contractors for default--not otherwise available. See Mid-East Contractors, Inc., B-242435, Mar. 29, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 342.

As a result of the substantial legal obligations imposed by the certification, omission from a bid of a signed Certificate of Procurement Integrity leaves unresolved a bidder's agreement to comply with a material requirement of the IFB. For these reasons, failure to complete and return the certificate itself by the bid opening date is a material deficiency in a bid requiring that the bid be rejected as nonresponsive. See also FAR § 14.404-2(m).

Here, as in Spence, EMS failed to submit a completed Procurement Integrity Certification with its bid; accordingly, since EMS's bid does not represent on its face an unequivocal commitment to comply with the material obligations imposed by the certification, the bid was properly rejected as nonresponsive by the Army.

The protest is dismissed.



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